

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NEW YORK
CENTRAL ISLIP DIVISION**

In re:

Goldner Capital Management LLC, *et al.*¹,

Chapter 11

Case No. 24-73789

Debtor.

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**DECLARATION OF WILLIAM MILLER IN SUPPORT OF MOTION FOR (1)
LIMITED RELIEF FROM AUTOMATIC STAY AS TO GOLDMAR CAPITAL
MANAGEMENT LLC, AND (2) DECLARATION THAT AUTOMATIC STAY DOES
NOT APPLY AS TO NON-DEBTORS**

I, **William Miller**, hereby declare as follows:

1. I am a CEO of Vertical Health Services LLC (“VHS”). Each of the Entity Movants² have authorized VHS to act on their behalf in these bankruptcy proceedings. I am familiar with the facts contained in this Declaration.

2. I make this Declaration on behalf of the Movants in support of the Motion for (1) limited relief from the automatic stay provisions for cause related to Goldner Capital Management LLC (“GCM”) so that it may resume litigation pending in state court; and (2) a

¹ The Debtors in these jointly administered chapter 11 cases are: GCM Manager LLC (Case No. 24-73790), GCM Parkside LLC (Case No. 24-73791), GCM UP LLC (Case No. 24-73792), GCM Wash LLC (Case No. 24-73793), LHW Master Tenant LLC (Case No. 24-73794), Missouri MT Holdings LLC (Case No. 24-73795).

² Capitalized terms have the same meaning as defined in the Motion.

declaration that the automatic stay does not apply to non-debtors, or in the alternative, granting relief from the automatic stay provisions for cause (the “Motion”).

3. On February 21, 2024, the Entity Movants filed a Complaint against Defendants in the State Court. A true and correct copy of the Complaint is attached hereto as Exhibit A.

4. On March 7, 2024, Defendants filed their Answer to Complaint, Counterclaims and Third-Party Complaint naming me as a third-party defendant. A true and correct copy of the Answer to Complaint, Counterclaims and Third-Party Complaint is attached hereto as Exhibit B.

5. On April 1, 2024, Movants filed their Answer and Affirmative Defenses to Defendants’ Counterclaims and Third-Party Complaint, a true and correct copy of which is attached hereto as Exhibit C.

6. The parties proceeded to prosecute their respective claims in the Litigation through discovery and motion practice until October 2, 2024, when the Debtors filed these Chapter 11 cases, and GCM filed a Notice of Stay in the Litigation, a true and correct copy of which is attached hereto as Exhibit D.

7. Discovery was well under way as of October 2, 2024. After Movants successfully moved to compel Defendants, Defendants have begun producing thousands of documents. Mr. Goldner and myself have been deposed in the Litigation.

8. Prior to the filing of the Notice of Stay, both parties had requested a summary judgment hearing, with the deadline to file summary judgment pleadings in the Litigation set for October 18, 2024. Movants did not file any dispositive motions based on the Notice of Stay filed in the Litigation.

9. On October 18, 2024, despite the Notice of Stay, Mr. Goldner and WA3 OP Univ LLC Moved for Partial Summary Judgment for their dismissal as defendants to the Litigation, a true and correct copy of which is attached hereto as Exhibit E.

10. Movants seek limited relief from stay as to GCM and a declaration confirming the stay is inapplicable as to the Non-debtor Defendants in order to prosecute the Litigation and exercise their remedies to the fullest extent permitted under Washington law, including but not limited to defending against Mr. Goldner and WA3 OP Univ LLC's Motion for Summary Judgment, moving for the extension of time to bring initiate summary judgment proceedings, continuing with discovery, conducting a trial, and obtaining prejudgment writs of attachment as to the Non-debtor Defendant's real property.

11. In the event judgment is rendered in Movant's favor against GCM, Movants will seek appropriate relief from this Court prior to seeking enforcement of any judgment.

12. The trial in the Litigation is currently scheduled for February 24, 2025.

13. I declare under the penalty of perjury that the foregoing is true and correct.

DATED this 23rd day of October, 2024.

By 
William Miller (Oct 23, 2024 13:57 PDT)

William Miller

EXHIBIT A

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

TALBOT RD. S I HEALTHCARE LLC,
SOUTHWEST 2ND STREET
HEALTHCARE LLC, and BRIDGEPORT
WAY W HEALTHCARE LLC,

Plaintiffs,

v.

SAMUEL GOLDNER, WA3
PROPERTIES TALBOT LLC, WA3
PROPERTIES RENTON LLC, WA3
PROPERTIES UNIV LLC, WA3 OP
RENTON LLC, WA3 OP TALBOT LLC,
WA3 UNIV LLC, WA3 OP UNIV LLC,
and GOLDNER CAPITAL
MANAGEMENT, LLC,

Defendants.

No. 24-2-03923-6 KNT

COMPLAINT FOR DAMAGES,
DECLARATORY RELIEF, AND
REQUEST FOR A SPEEDY
HEARING

Plaintiffs Talbot Rd. S I Healthcare LLC, Southwest 2nd Street Healthcare LLC,
and Bridgeport Way W Healthcare LLC, bring this complaint against Defendants Samuel
Goldner, WA3 Properties Talbot LLC, WA3 Properties Renton LLC, WA3 Properties
Univ LLC, WA3 Op Renton LLC, WA3 Op Talbot LLC, WA3 Univ LLC, WA3 Op Univ
LLC, and Goldner Capital Management LLC. Plaintiffs allege as follows:

I. PARTIES

A. Parties to the Leases

1. Plaintiff Talbot Rd. S I Healthcare LLC (the “**Talbot Plaintiff**”) is a Delaware limited liability company.

2. On information and belief, Defendant Samuel Goldner is an individual residing in Lawrence, New York.

3. Defendant Samuel Goldner signed contracts on behalf of Defendant WA3 Properties Talbot LLC. As of July 15, 2023, Defendant WA3 Properties Talbot LLC was cancelled by the Delaware Secretary of State, and Goldner was personally liable for contracts he signed on behalf of WA3 Properties Talbot LLC. Goldner and WA3 Properties Talbot LLC will be referred to collectively as the “**Talbot Landlord.**”

4. The Talbot Landlord owns the real property, improvements, and personal property constituting a 136-bed skilled nursing facility located at 4430 Talbot Road S., in Renton, Washington (the “**Talbot Facility**”). The Talbot Landlord leased this facility to the Talbot Plaintiff pursuant to a September 1, 2023, Lease (the “**Talbot Facility Lease**”).

5. Plaintiff Southwest 2nd Street Healthcare LLC (the “**Renton Plaintiff**”) is a Delaware limited liability company.

6. Goldner signed contracts on behalf of Defendant WA3 Properties Renton LLC. As of July 15, 2023, Defendant WA3 Properties Renton LLC was cancelled by the Delaware Secretary of State, and Goldner was personally liable for contracts he signed on behalf of WA3 Properties Renton LLC. Goldner and WA3 Properties Renton LLC will be referred to collectively as the “**Renton Landlord.**”

7. The Renton Landlord owns the real property, improvements, and personal property constituting a 99-bed skilled nursing facility located at 80 SW 2nd Street in Renton, Washington (the “**Renton Facility**”). The Renton Landlord leased this facility to

1 the Renton Plaintiff pursuant to a September 1, 2023, Lease (the “**Renton Facility**
2 **Lease**”).

3 8. Plaintiff Bridgeport Way W Healthcare LLC (the “**University Place**
4 **Plaintiff**”) is a Delaware limited liability company.

5 9. Goldner signed contracts on behalf of Defendant WA3 Properties Univ
6 LLC. As of July 15, 2023, Defendant WA3 Properties Univ LLC was canceled by the
7 Delaware Secretary of State, and Goldner was personally liable for contracts he signed on
8 behalf of WA3 Properties Univ LLC. Goldner and WA3 Properties Univ LLC will be
9 referred to collectively as the “**University Place Landlord.**”

10 10. The University Place Landlord owns the real property, improvements, and
11 personal property constituting a 120-bed skilled nursing facility located at 5520
12 Bridgeport Way West in University Place, Washington (the “**University Place Facility**”).
13 The University Place Landlord leased this facility to the University Place Plaintiff
14 pursuant to a September 1, 2023, Lease (the “**University Place Facility Lease**”).

15 11. Collectively, the Talbot Landlord, the Renton Landlord, and the University
16 Place Landlord will be referred to as the “**Landlords.**”

17 12. Collectively, the Talbot Facility, the Renton Facility, and the University
18 Place Facility will be referred to as the “**Facilities.**”

19 13. Collectively, the Talbot Facility Lease, the Renton Facility Lease, and the
20 University Place Facility Lease will be referred to as the “**Leases.**”

21 **B. Parties to the Operating Transfer Agreements**

22 14. WA3 Op Talbot LLC was a Delaware limited liability company that
23 previously operated the Talbot Facility. As of July 15, 2023, WA3 Op Talbot LLC was
24 canceled by the Delaware Secretary of State, and Goldner was personally liable for
25 contracts he signed on behalf of WA3 Op Talbot LLC. Goldner and WA3 Op Talbot LLC
26 will be referred to collectively as the “**Former Talbot Operator.**”

1 15. The Talbot Plaintiff and the Former Talbot Operator executed a September
2 1, 2023, Operations Transfer Agreement (the “**Talbot OTA**”), pursuant to which the
3 parties agreed to certain obligations and responsibilities concerning the transfer of
4 operations of the Talbot Facility.

5 16. Defendant WA3 Op Renton LLC was a Delaware limited liability company
6 that previously operated the Renton Facility. As of August 18, 2023, WA3 Op Renton
7 LLC was canceled by the Delaware Secretary of State, and Goldner was personally liable
8 for contracts he signed on behalf of WA3 Op Renton LLC. Goldner and WA3 Op Renton
9 LLC will be referred to collectively as the “**Former Renton Operator.**”

10 17. The Renton Plaintiff and the Former Renton Operator executed a
11 September 1, 2023, Operations Transfer Agreement (the “**Renton OTA**”), pursuant to
12 which the parties agreed to certain obligations and responsibilities concerning the transfer
13 of operations of the Renton Facility.

14 18. Defendant WA 3 Univ LLC was purported to be a Delaware limited
15 liability company that formerly operated the University Place Facility. Goldner executed a
16 September 1, 2023, Operations Transfer Agreement with the University Place Plaintiff on
17 behalf of the WA 3 Univ LLC entity (the “**University Place OTA**”). On information and
18 belief, WA 3 Univ LLC is not a Delaware entity.

19 19. On information and belief, the former operator of the University Place
20 Facility was Defendant WA 3 Op Univ LLC. As of August 18, 2023, Defendant WA 3 Op
21 Univ LLC was canceled by the Delaware Secretary of State. Goldner was personally
22 liable for contracts he signed on behalf of Defendant WA 3 Univ LLC (a non-existent
23 entity) or WA 3 Op Univ LLC (a canceled entity). Goldner, Defendant WA 3 Univ LLC,
24 and Defendant WA 3 Op Univ LLC will be referred to collectively as the “**Former**
25 **University Place Operator.**”
26

20. In the University Place OTA, the University Place Plaintiff and the Former University Place Operator agreed to certain obligations and responsibilities concerning the transfer of operations of the University Place Facility.

21. Collectively, the Former Talbot Operator, the Former Renton Operator, and the Former University Place Operator will be referred to as the “**Former Operators.**”

22. Collectively, the Talbot OTA, the Renton OTA, and the University Place OTA will be referred to as the “**OTAs.**”

C. **Goldner Entities**

23. On information and belief, Goldner Capital Management LLC (“**Goldner Capital**”) is a Delaware limited liability company with its principal place of business in Lawrence, New York. On information and belief, Goldner Capital is Goldner’s personal entity and directed by Goldner.

II. JURISDICTION AND VENUE

24. Jurisdiction in this Court is proper because this action seeks both legal and equitable relief. Venue is proper because some of the Facilities are in King County, Washington.

25. In addition, pursuant to the Leases and OTAs, venue and jurisdiction in this Court is appropriate.

III. FACTS

A. **Landlords Have Made Improper Demands**

26. When executing the Leases, Plaintiffs and Landlords executed additional agreements that governed their rights and obligations as landlords and tenants, including with respect to third-parties.

27. For example, the Facilities were subject to one or more mortgages provided by mortgage lender Merchants Bank of Indiana (“**MBI**”). The Plaintiffs and Landlords executed “**Lease Payment Agreements,**” which required Plaintiffs to pay (or direct) all

1 rent directly to MBI.

2 28. The Leases acknowledge this arrangement. Landlords acknowledged in the
3 Lease that they were assigning their rights to receive rent to the mortgage lender, and that
4 the mortgage lender would have exclusive authority to exercise the Landlords' remedies
5 related to payment of rent.

6 29. On January 31, 2024, Goldner demanded that Plaintiffs pay rent to Goldner
7 Capital, not MBI.

8 30. Plaintiffs inquired with MBI. MBI stated that the Lease Payment
9 Agreements have not changed and Plaintiffs must direct rent to MBI, not Goldner Capital.

10 31. Plaintiffs informed Goldner that they must direct rent to MBI under the
11 various agreements the parties signed.

12 32. On February 5, 2024, purporting to act through the defunct Landlord
13 entities, Goldner sent Plaintiffs a purported "Notices of Default." The notice letter
14 demanded rent, late charges, and interest. The notice letter stated that if Landlords did not
15 receive certain rent payments by specified dates, Landlords would seek various remedies,
16 including appointment of a receiver over the Facilities and claims against the Plaintiffs'
17 guarantor, Vertical Health Services, LLC.

18 33. If Plaintiffs complied with Landlords' demands, Plaintiffs would breach
19 their obligations to MBI under the Lease Payment Agreements. Landlords had no right
20 under the Leases to make these demands or to seek enforcement of remedies under the
21 Leases.

22 **B. The Former Operators Have Breached the OTAs**

23 34. The Former Operators have repeatedly breached numerous obligations to
24 the Plaintiffs under the OTAs.

25 35. For example, the Former Operators must indemnify Plaintiffs for certain
26 expenses and liabilities. Plaintiffs have incurred indemnifiable expenses and liabilities and

1 have demanded indemnification for such expenses from the Former Operators under the
2 OTAs. The Former Operators have failed to indemnify Plaintiffs as required.

3 36. These and other breaches of the OTAs have damaged Plaintiffs in an
4 amount to be proven at trial.

5 **C. Goldner Is Personally Liable for All Lease and OTA Obligations**

6 37. Goldner is personally liable for all obligations of contracts he signed on
7 behalf of defunct and non-existent entities.

8 38. Goldner signed the Leases and OTAs on behalf of canceled or non-existent
9 entities.

10 39. Goldner bears responsibility for all obligations and liabilities of WA3
11 Properties Talbot LLC, WA3 Properties Renton LLC, WA3 Properties Univ LLC, WA3
12 Op Renton LLC, WA3 Op Talbot LLC, WA3 Univ LLC, and WA3 Op Univ LLC, under
13 the OTAs and Leases.

14 **D. Goldner and Goldner Capital Have Failed to Respect the Corporate Form**

15 40. On information and belief, Goldner and Goldner Capital are using entities
16 to commit financial malfeasance throughout the country, leaving numerous injured parties
17 in their wake. Nursing homes affiliated with Goldner and Goldner Capital (“**Goldner**
18 **Nursing Homes**”) have been shut down throughout the country by both state and federal
19 governmental authorities, including due to findings that various acts or omissions
20 threatened resident health and welfare. Goldner Nursing Homes have been put into
21 receivership, with Court findings that receivership was necessary to protect against
22 misappropriation, impairment, and waste. Goldner and Goldner Capital have been named
23 in lawsuits by residents, landlords, lenders, and vendors.

24 41. Goldner, Goldner Capital, and their affiliates have abused the corporate
25 form. As described above, Goldner has not kept his various entities in good standing and
26 yet he has continued to sign contracts on behalf of defunct entities. Goldner has demanded

1 payment of rents purportedly belonging to the Landlords but sought those payments to be
2 directed to Goldner Capital's bank accounts rather than where required by the Lease
3 Payment Agreements. On information and belief, Goldner and Goldner Capital have
4 under-funded entities and operations throughout the country and have attempted to use the
5 corporate form to avoid obligations to vendors and creditors and to escape liability from
6 violations of state and federal law.

7 42. On information and belief, Goldner, Goldner Capital, and their affiliates
8 have co-mingled and misused funds. Defendants have received funds that, by contract,
9 belong to or are due to Plaintiffs; however, on information and belief, Goldner and
10 Goldner Capital have used those funds for unrelated entities and projects, as directed by
11 Goldner.

12 43. If Goldner is permitted to use the corporate form to avoid liability under
13 the contracts he signed with Plaintiffs, Goldner will work an extreme injustice on his
14 contract counterparties in Washington, including Plaintiffs, and potentially on the
15 residents of the nursing homes who Plaintiffs serve.

16 **IV. FIRST CAUSE OF ACTION:**
17 **DECLARATORY JUDGMENT**

18 44. Plaintiffs re-allege and incorporate by reference the foregoing allegations.

19 45. The Leases and Lease Payment Agreements are valid, binding contracts
20 between Landlords (which includes Goldner personally as the signatory of defunct
21 entities), Plaintiffs, and MBI (among others). These contracts require Plaintiffs to pay rent
22 to MBI.

23 46. Under these contracts, Landlords have no right to demand rent or threaten
24 action based on the non-payment of rent. Landlords have attempted to cause Plaintiffs to
25 breach their contractual obligations to MBI. Plaintiffs seek a declaration that Plaintiffs
26 paying rent to MBI does not give rise to a breach of the Leases, and that Landlords have
no rights or remedies under the Leases related to the payment of rent.

1 47. The facts set forth above show the existence of an actual, justiciable
 2 controversy involving specific claims regarding the interpretation and effect of the Leases
 3 and Lease Payment Agreements and the rights and obligations of the parties under those
 4 contracts. The claims are ripe for adjudication, and all facts necessary for an adjudication
 5 of this dispute have occurred.

6 **V. SECOND CAUSE OF ACTION:**
 7 **BREACH OF CONTRACT**

8 48. Plaintiffs re-allege and incorporate by reference the foregoing allegations.

9 49. The Former Operators and Landlords (all of which include Goldner
 10 personally as the signatory of canceled or non-existent entities) are parties to binding
 11 contracts with Plaintiffs described above.

12 50. The Former Operators and Landlords have breached, or attempted to
 13 breach, those contracts as described above.

14 51. These breaches have directly damaged Plaintiffs in an amount to be proven
 15 at trial.

16 52. Defendants Goldner, WA3 Properties Talbot LLC, WA3 Properties Renton
 17 LLC, WA3 Properties Univ LLC, WA3 Op Renton LLC, WA3 Op Talbot LLC, WA3 Op
 18 Univ LLC, and WA3 Univ LLC are liable to Plaintiffs for such damages.

19 **VI. THIRD CAUSE OF ACTION:**
 20 **BREACH OF THE WASHINGTON CONSUMER PROTECTION ACT**
 RCW 19.86, ET SEQ.

21 53. Plaintiffs re-allege and incorporate by reference the foregoing allegations.

22 54. By their actions, Goldner and Goldner Capital have performed deceptive
 23 and unfair acts.

24 55. These acts harmed the public interest and injured Plaintiffs' business and
 25 property, in an amount to be proven at trial.

**VII. FOURTH CAUSE OF ACTION:
PIERCING THE CORPORATE VEIL (IN THE ALTERNATIVE)**

56. Plaintiffs re-allege and incorporate by reference the foregoing allegations.

57. Goldner is personally liable for the above claims due to his actions.

Goldner Capital is liable for the Third Cause of Action due to its actions.

58. In the alternative, Goldner and Goldner Capital are also liable for the relief sought against all defendants because they have abused the corporate form, including the corporate form of Defendants WA3 Properties Talbot LLC, WA3 Properties Renton LLC, WA3 Properties Univ LLC, WA3 Op Renton LLC, WA3 Op Talbot LLC, WA3 Op Univ LLC, and WA3 Univ LLC.

59. If Goldner and Goldner Capital are permitted to abuse the corporate form, Plaintiffs (among others) will be inequitably harmed.

60. As a result, the corporate veil must be pierced, and Goldner and Goldner Capital must be held liable for the obligations of Defendants WA3 Properties Talbot LLC, WA3 Properties Renton LLC, WA3 Properties Univ LLC, WA3 Op Renton LLC, WA3 Op Talbot LLC, WA3 Op Univ LLC, and WA3 Univ LLC.

VIII. PRAYER FOR RELIEF

Plaintiffs request the following relief:

With respect to the First Cause of Action:

A. An order directing a speedy hearing of this action for declaratory judgment and advancing such hearing on the Court's calendar pursuant to CR 57;

B. A declaration of the parties' rights and obligations under the Leases and Lease Payment Agreements;

C. A declaration that Plaintiffs' rent payments are to be made to MBI, and not Goldner Capital or Landlords; and

1 D. A declaration that Landlords have no right to demand rents from Plaintiffs
2 or to otherwise enforce any rights or remedies related to rents under the Leases, as such
3 rights and remedies have been assigned to MBI.

4 With respect to the Second and Third Causes of Action:

5 E. Damages in an amount to be proven at trial.

6 With respect to the Fourth Cause of Action:

7 F. A declaration that Goldner and Goldner Capital Management are liable to
8 Plaintiffs for the debts and obligations of WA3 Properties Talbot LLC, WA3 Properties
9 Renton LLC, WA3 Properties Univ LLC, WA3 Op Renton LLC, WA3 Op Talbot LLC,
10 WA3 Op Univ LLC, and WA3 Univ LLC.

11 With respect to all causes of action:

12 G. Attorneys' fees and costs to the extent provided by contract or law; and

13 H. Such other relief as the Court deems just and proper.

14 DATED this 20th day of February, 2024.

15 McNAUL EBEL NAWROT & HELGREN PLLC

16 By: s/ Daniel M. Weiskopf

17 Daniel M. Weiskopf, WSBA No. 44941

18 Leslie E. Swanson, WSBA No. 50792

19 600 University Street, Suite 2700

20 Seattle, Washington 98101

21 (206) 467-1816

22 dweiskopf@mcnaul.com

23 lswanson@mcnaul.com

24 *Attorneys for Plaintiffs*

EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

TALBOT RD. S I HEALTHCARE LLC,
SOUTHWEST 2ND STREET HEALTHCARE
LLC, and BRIDGEPORT WAY W
HEALTHCARE LLC,

Plaintiffs,

v.

SAMUEL GOLDNER, WA3 PROPERTIES
TALBOT LLC, WA3 PROPERTIES
RENTON LLC, WA3 PROPERTIES UNIV
LLC, WA3 OP RENTON LLC, WA3 OP
TALBOT LLC, WA3 UNIV LLC, WA3 OP
UNIV LLC AND GOLDNER CAPITAL
MANAGEMENT, LLC,

Defendants.

WA3 PROPERTIES TALBOT LLC, WA3
PROPERTIES RENTON LLC, WA3
PROPERTIES UNIV LLC,

Counter-Claim Plaintiffs,

v.

TALBOT RD. S I HEALTHCARE LLC,
SOUTHWEST 2ND STREET HEALTHCARE
LLC, and BRIDGEPORT WAY W
HEALTHCARE LLC,

Counter-Claim Defendants.

Case No. 24-2-03923-6 KNT

DEFENDANTS' ANSWER TO
COMPLAINT, COUNTERCLAIMS
AND THIRD-PARTY COMPLAINT

DEFENDANTS' ANSWER TO COMPLAINT,
COUNTERCLAIMS AND THIRD-PARTY COMPLAINT - 1

Snell & Wilmer
One Union Square
600 University Street, Suite 310
Seattle, Washington 98101

1 WA3 PROPERTIES TALBOT LLC, WA3
 2 PROPERTIES RENTON LLC, WA3
 3 PROPERTIES UNIV LLC,

4 Third-Party Plaintiffs,

5 v.

6 WILLIAM MILLER, an individual,

7 Third-Party Defendant.

8 Samuel Goldner, WA3 Properties Talbot LLC, WA3 Properties Renton LLC, WA3
 9 Properties Univ LLC, WA3 Op Renton LLC, WA3 Op Talbot LLC, WA3 Univ LLC, WA3 Op Univ
 10 LLC and Goldner Capital Management, LLC (together, “**Defendants**” or “**Facility Owners**”), each
 11 a defendant, hereby admit, deny, allege, and claim as set forth below in response to the complaint of
 12 Talbot Rd. S I Healthcare LLC, Southwest 2nd Street Healthcare LLC, and Bridgeport Way W
 13 Healthcare LLC (together, “**Plaintiffs**” or “**Operator-Tenants**”), each a plaintiff:

14 I. GENERAL STATEMENT

15 For the sake of consistency only, and not as an admission of any allegation of fact or liability
 16 on any cause of action asserted by Plaintiffs, capitalized terms in this pleading will carry the meaning
 17 ascribed to them in Plaintiff’s complaint except as modified herein.

18 II. PARTIES

19 1. Defendants deny the allegation in this paragraph for lack of sufficient knowledge.
 20 2. Defendants deny the allegation in this paragraph.
 21 3. Defendants admit Samuel Goldner has authority to sign contracts on behalf of WA3
 22 Properties Talbot LLC and deny all other factual allegations in this paragraph. This paragraph also
 23 alleges legal conclusions to which no answer is required; Defendants deny the alleged conclusions
 24 to the extent an answer is required. By way of further answer, Defendants state that WA3 Properties
 25 Talbot LLC is recognized by the Washington Secretary of State as an “active” foreign limited
 26 liability company.

DEFENDANTS’ ANSWER TO COMPLAINT,
 COUNTERCLAIMS AND THIRD-PARTY COMPLAINT - 2

Snell & Wilmer
 One Union Square
 600 University Street, Suite 310
 Seattle, Washington 98101

1 4. Defendants admit the allegation in this paragraph.

2 5. Defendants deny the allegation in this paragraph for lack of sufficient knowledge.

3 6. Defendants admit Samuel Goldner has authority to sign contracts on behalf of WA3
4 Properties Renton LLC and deny all other factual allegations in this paragraph. This paragraph also
5 alleges legal conclusions to which no answer is required; Defendants deny the alleged conclusions
6 to the extent an answer is required. By way of further answer, Defendants state that WA3 Properties
7 Renton LLC is recognized by the Washington Secretary of State as an “active” foreign limited
8 liability company.

9 7. Defendants admit the allegation in this paragraph.

10 8. Defendants deny the allegation in this paragraph for lack of sufficient knowledge.

11 9. Defendants admit Samuel Goldner has authority to sign contracts on behalf of WA3
12 Properties Univ LLC and deny all other factual allegations in this paragraph. This paragraph also
13 alleges legal conclusions to which no answer is required; Defendants deny the alleged conclusions
14 to the extent an answer is required. By way of further answer, Defendants state that WA3 Properties
15 Univ LLC is recognized by the Washington Secretary of State as an “active” foreign limited liability
16 company.

17 10. Defendants admit the allegation in this paragraph.

18 11. This paragraph defines a term used in the complaint and does not allege an operative
19 fact to which an answer is required.

20 12. This paragraph defines a term used in the complaint and does not allege an operative
21 fact to which an answer is required.

22 13. This paragraph defines a term used in the complaint and does not allege an operative
23 fact to which an answer is required.

24 14. Defendants admit WA3 Op Talbot LLC previously operated the Talbot Facility.
25 Defendants deny all other allegations in this paragraph. This paragraph also alleges legal conclusions
26 to which no answer is required; Defendants deny the alleged conclusions to the extent an answer is

DEFENDANTS’ ANSWER TO COMPLAINT,
COUNTERCLAIMS AND THIRD-PARTY COMPLAINT - 3

1 required.

2 15. Defendants admit the Talbot Plaintiff and Former Talbot Operator executed the
3 Talbot OTA on or about September 1, 2023. The terms and conditions in the Talbot OTA speak for
4 themselves. Defendants deny the allegations in this paragraph to the extent Plaintiffs intend to
5 characterize the Talbot OTA in a manner that is inconsistent with the terms and conditions therein.

6 16. Defendants admit WA3 Op Renton LLC previously operated the Renton Facility.
7 Defendants deny all other allegations in this paragraph. This paragraph also alleges legal conclusions
8 to which no answer is required; Defendants deny the alleged conclusions to the extent an answer is
9 required.

10 17. Defendants admit the Renton Plaintiff and Former Renton Operator executed the
11 Renton OTA on or about September 1, 2023. The terms and conditions in the Renton OTA speak
12 for themselves. Defendants deny the allegations in this paragraph to the extent Plaintiffs intend to
13 characterize the Renton OTA in a manner that is inconsistent with the terms and conditions therein.

14 18. Defendants admit that Samuel Goldner executed the University Place OTA on behalf
15 of WA3 Op Univ LLC. Defendants deny all other allegations in this paragraph. By way of further
16 answer, Defendants state that references in the University Place OTA to “WA3 Univ LLC” appear
17 to be a scrivener’s error.

18 19. Defendants admit the former operator of the University Place Facility was WA3 Op
19 Univ LLC. Defendants deny all other allegations in this paragraph. This paragraph also alleges legal
20 conclusions to which no answer is required; Defendants deny the alleged conclusions to the extent
21 an answer is required.

22 20. The terms and conditions in the University Place OTA speak for themselves.
23 Defendants deny the allegations in this paragraph to the extent Plaintiffs intend to characterize the
24 University Place OTA in a manner that is inconsistent with the terms and conditions therein.

25 21. This paragraph defines a term used in the complaint and does not allege an operative
26 fact to which an answer is required.

1 Defendants did not object to Plaintiff paying Merchants Bank of Indiana as may be contemplated by
2 the Lease Payment Agreements.

3 32. Defendants admit serving Plaintiffs, on or about February 4, 2024, with notices of
4 default arising from Plaintiffs' failure to pay rent and other amounts due and owing under their
5 respective leases. The statements in each notice of default speak for themselves. Defendants deny
6 the allegations in this paragraph to the extent Plaintiffs intend to characterize any notice in a manner
7 that is inconsistent with the statements therein. Defendants generally deny all other allegations in
8 this paragraph.

9 33. This paragraph alleges legal conclusions to which no answer is required; Defendants
10 generally deny the alleged conclusions to the extent an answer is required and specifically deny the
11 contention that Landlord "had no right under the Leases to make these demands or to seek
12 enforcement of remedies under the Leases."

13 34. This paragraph alleges legal conclusions to which no answer is required; Defendants
14 deny the alleged conclusions to the extent an answer is required.

15 35. The terms and conditions in the OTAs speak for themselves. Defendants deny the
16 allegations in this paragraph to the extent Plaintiffs intend to characterize any OTA in a manner that
17 is inconsistent with the terms and conditions therein. Defendants deny the allegation that Plaintiffs
18 have incurred "indemnifiable expenses" for lack of sufficient knowledge.

19 36. This paragraph alleges legal conclusions to which no answer is required; Defendants
20 deny the alleged conclusions to the extent an answer is required.

21 37. This paragraph alleges legal conclusions to which no answer is required; Defendants
22 deny the alleged conclusions to the extent an answer is required.

23 38. Defendants deny the allegation in this paragraph.

24 39. This paragraph alleges legal conclusions to which no answer is required; Defendants
25 deny the alleged conclusions to the extent an answer is required.

26 40. Defendants admit that Mr. Goldner and Goldner Capital have been parties to lawsuits

1 by third parties. The nature of those lawsuits, and the pleadings, papers, and orders filed therein,
 2 speak for themselves. Defendants deny the allegations in this paragraph to the to the extent Plaintiffs
 3 intend to characterize those lawsuits in a manner that is inconsistent with the pleadings, papers, and
 4 orders filed therein. By way of further response, Defendants specifically deny that any court has
 5 found that Mr. Goldner or Goldner Capital have engaged in misappropriation of funds. Defendants
 6 further deny all other allegations in this paragraph.

7 41. This paragraph alleges legal conclusions to which no answer is required; Defendants
 8 deny the alleged conclusions to the extent an answer is required. Defendants deny the factual
 9 allegations in this paragraph.

10 42. Defendants deny the allegations in this paragraph.

11 43. This paragraph alleges legal conclusions to which no answer is required; Defendants
 12 deny the alleged conclusions to the extent an answer is required

13 **V. FIRST CAUSE OF ACTION:**
 14 **DECLARATORY JUDGMENT**

15 44. Defendants incorporate the foregoing admissions, denials, and answers as if fully set
 16 forth herein.

17 45. Defendants admit the Leases and Lease Payment Agreements are binding and
 18 enforceable contracts between Merchants Bank of Indiana, the respective Plaintiff, and respective
 19 Landlord. Defendants deny that Mr. Goldner is a party to any Lease or Lease Payment Agreement.
 20 The terms and conditions of the Leases and Lease Payment Agreements speak for themselves.
 21 Defendants deny the allegations in this paragraph to the extent Plaintiffs intend to characterize any
 22 Lease or Lease Payment Agreement in a manner that is inconsistent with the terms and conditions
 23 therein.

24 46. The terms and conditions of the Leases and Lease Payment Agreements speak for
 25 themselves. Defendants deny the allegations in this paragraph to the extent Plaintiffs intend to
 26 characterize any Lease or Lease Payment Agreement in a manner that is inconsistent with the terms

1 and conditions therein. Defendants specifically deny Plaintiffs are entitled to a declaration that
 2 “Landlords have no rights or remedies under the Leases related to the payment of rent.”

3 47. Defendants admit there is a justiciable controversy regarding the interpretation of the
 4 Lease and Lease Payment Agreements. Defendants deny all other allegations in this paragraph.

5 **VI. SECOND CAUSE OF ACTION:**
 6 **BREACH OF CONTRACT**

7 48. Defendants incorporate the foregoing admissions, denials, and answers as if fully set
 8 forth herein.

9 49. Defendants admit the Former Operators, Landlords, and Plaintiffs are parties to
 10 certain binding and enforceable contracts. Defendants deny that Mr. Goldner is a party to any binding
 11 and enforceable contract with Plaintiffs.

12 50. Defendants deny the allegation in this paragraph.

13 51. Defendants deny the allegation in this paragraph.

14 52. Defendants deny the allegation in this paragraph.

15 **VII. THIRD CAUSE OF ACTION:**
 16 **BREACH OF THE CONSUMER PROTECTION ACT**
 17 **RCW 19.86, ET. SEQ.**

18 53. Defendants incorporate the foregoing admissions, denials, and answers as if fully set
 19 forth herein.

20 54. Defendants deny the allegation in this paragraph.

21 55. Defendants deny the allegation in this paragraph.

22 **VIII. FOURTH CAUSE OF ACTION:**
 23 **PIERCING THE CORPORATE VEIL (IN THE ALTERNATIVE)**

24 56. Defendants incorporate the foregoing admissions, denials, and answers as if fully set
 25 forth herein.

26 57. Defendants deny the allegation in this paragraph.

58. Defendants deny the allegation in this paragraph.

59. Defendants deny the allegation in this paragraph.

60. Defendants deny the allegation in this paragraph.

IX. AFFIRMATIVE DEFENSES

BY WAY OF FURTHER ANSWER, Defendants allege the following affirmative defenses:

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. Plaintiffs have breached the contracts referenced in their complaint.
3. Plaintiffs have unclean hands.
4. Defendants are entitled to setoffs against Plaintiffs' damages, if any.

Defendants reserve the right to amend or supplement these affirmative defenses at a later date.

X. COUNTERCLAIMS

BY WAY OF FURTHER RESPONSE, Facility Owners allege and counterclaim as follows:

A. Parties

1. WA3 Properties Talbot LLC, counterclaim plaintiff, ("**Talbot Owner**") is a Delaware limited liability company. Talbot Owner owns the Talbot Facility.

2. WA3 Properties Renton LLC, counterclaim plaintiff, ("**Renton Owner**") is a Delaware limited liability company. Renton Owner owns the Renton Facility.

3. WA3 Properties Univ LLC, counterclaim plaintiff, ("**University Place Owner**") is a Delaware limited liability company. University Place Owner owns the University Place Facility.

4. Talbot Rd. S I Healthcare LLC, counterclaim defendant, ("**Talbot Operator-Tenant**") is a Delaware limited liability company.

5. Southwest 2nd Street Healthcare LLC, counterclaim defendant, ("**Renton Operator-Tenant**") is a Delaware limited liability company.

6. Bridgeport Way W Healthcare LLC, counterclaim defendant, ("**University Place Operator-Tenant**") is a Delaware limited liability company.

7. William Miller is a Washington resident. Mr. Miller is the Manager of Vertical Health Services, LLC ("**Guarantor**"). Guarantor is under contract with each Operator-Tenant to manage

DEFENDANTS' ANSWER TO COMPLAINT,
COUNTERCLAIMS AND THIRD-PARTY COMPLAINT - 9

1 their respective facilities.

2 **B. Jurisdiction and Venue**

3 8. This Court has personal jurisdiction over the parties to these counterclaims.

4 9. This Court has subject matter jurisdiction over these counterclaims.

5 10. King County is a proper venue for these counterclaims.

6 **C. Facts**

7 **1. Talbot Facility – Failure to Pay Rent to Anyone**

8 11. The Talbot Facility is a 136-bed skilled nursing facility that is licensed to operate and
9 regulated by the Washington Department of Social & Health Services (“**Department**”).

10 12. On or about September 1, 2023, Talbot Operator-Tenant and Talbot Owner executed
11 that certain Operating Lease for the Talbot Facility (“**Talbot Lease**”).

12 13. The Talbot Lease explicitly requires Talbot Operator-Tenant to pay to Talbot Owner,
13 no later than the fifth day of each month, monthly “**Base Rent**” and “**Additional Rent**,” as both
14 terms are defined in the Talbot Lease, (together, “**Rent**”). The term “Additional Rent” includes,
15 without limitation: (i) expenses to obtain and maintain certain policies of insurance as set out in
16 article VI of the Lease. and (ii) expenses defined in section 4.2 of the Lease as “Impositions,”
17 including real estate and other taxes, assessments, utility charges, licensing and permitting fees, and
18 other expenses.

19 14. Section 3.3 of the Talbot Lease also contains the following statement:

20 Tenant’s obligation to pay Rent is independent of all, and is in no
21 manner conditioned upon any, other covenants, conditions and
22 obligations of Landlord or Tenant under this Lease. There shall be no
abatement of Rent payments for any reason nor shall Tenant be entitled
to any offsets or deductions from Rent payments due hereunder.

23 15. Section 7.4 of the Talbot Lease requires Talbot Operator-Tenant to provide operating
24 budgets, financial statements, certifications, and other material documentation on regular bases as
25 set forth in the section.

26 16. On or about September 7, 2023, Secured Lender, Talbot Operator-Tenant, and Talbot

Owner executed a Lease Payment Agreement under which the parties thereto agreed that Talbot Operator-Tenant will remit Rent (from its own funds or by draw on a revolving line of credit) directly to Secured Lender. In turn, Secured Lender agreed it would promptly remit to Talbot Owner the difference between the remitted Rent and the amount due from Talbot Owner to Secured Lender under a loan agreement between them.

17. Section 17.1(a) of the Talbot Lease defines an “Event of Default” to include, without limitation, a failure to: (i) pay Rent within three days of when due; and (ii) perform any other covenant, obligation, or agreement required of Talbot Operator-Tenant.

18. In an “Event of Default,” as defined in the Talbot Lease, Section 17.2(b) of the Talbot Lease authorizes Talbot Owner by written notice install “a receiver of its choice, ... by summary proceedings or otherwise.”

19. Talbot Operator-Tenant has not paid to Talbot Owner or to Secured Lender the Rent due for the months of January 2024, February 2024, or March 2024.

20. Talbot Operator-Tenant has failed to provide financial statements and documents required by Section 7.4 of the Talbot Lease.

2. Renton Facility – Failure to Pay Rent to Anyone

21. The Renton Facility is a 99-bed skilled nursing facility that is licensed to operate and regulated by the Department.

22. On or about September 1, 2023, Renton Operator-Tenant and Renton Owner executed that certain Operating Lease for the Renton Facility (“**Renton Lease**”).

23. The substantive terms and conditions in the Renton Lease are identical to the substantive terms and conditions in the Talbot Lease.

24. On or about September 7, 2023, Secured Lender, Renton Operator-Tenant, and Renton Owner executed a Lease Payment Agreement under which the parties thereto agreed that Renton Operator-Tenant will remit Rent (from its own funds or by draw on a revolving line of credit) directly to Secured Lender. In turn, Secured Lender agreed it would promptly remit to Renton Owner

1 the difference between the remitted Rent and the amount due from Renton Owner to Secured Lender
2 under a loan agreement between them.

3 25. Renton Operator-Tenant has not paid to Renton Owner or to Secured Lender the Rent
4 due for the months of January 2024, February 2024, or March 2024. The non-payment of Rent
5 includes failure to pay bed taxes, which puts the Renton Operator-Tenant's license and thus its ability
6 to operate the Renton Facility at serious risk.

7 26. Renton Operator-Tenant has failed to provide financial statements and documents
8 required by Section 7.4 of the Renton Lease.

9 **3. University Place Facility – Failure to Pay Rent to Anyone**

10 27. The University Place Facility is a 120-bed skilled nursing facility that is licensed to
11 operate and regulated by the Department.

12 28. On or about September 1, 2023, University Place Operator-Tenant and University
13 Place Owner executed that certain Operating Lease for the University Place Facility ("**University**
14 **Place Lease**").

15 29. The substantive terms and conditions in the University Place Lease are identical to
16 the substantive terms and conditions in the Talbot Lease.

17 30. On or about September 7, 2023, Secured Lender, University Place Operator-Tenant,
18 and University Place Owner executed a Lease Payment Agreement under which the parties thereto
19 agreed that University Place Operator-Tenant will remit Rent (from its own funds or by draw on a
20 revolving line of credit) directly to Secured Lender. In turn, Secured Lender agreed it would
21 promptly remit to University Place Owner the difference between the remitted Rent and the amount
22 due from University Place Owner to Secured Lender under a loan agreement between them.

23 31. University Place Operator-Tenant has not paid to University Place Owner or to
24 Secured Lender the Rent due for the months of January 2024, February 2024, or March 2024. The
25 non-payment of Rent includes failure to pay bed taxes, which puts the University Place Operator-
26 Tenant's license and thus its ability to operate the University Place Facility at serious risk.

1 32. University Place Operator-Tenant has failed to provide financial statements and
2 documents required by Section 7.4 of the University Place Lease.

3 **4. Insolvency and Abuse of Corporate Forms**

4 33. Operator-Tenants do not generate revenue sufficient to pay their operating expenses.
5 On the last set of financial statements provided to Facility Owners, each Operator-Tenant reported
6 net operating losses, unpaid taxes, significant past-due payables, and negative net equity.

7 34. On at least one occasion, Operator-Tenants requested accommodation from Facility
8 Owners and Secured Lender simply to make payroll. Without waiving their rights, Facility Owners
9 and Secured Lender provided the accommodate because the consequences of failing to make payroll
10 would have been catastrophic.

11 35. Even while failing to pay taxes, regular operating expenses, and Rent, Operator-
12 Tenants prioritized payment of Guarantor's management fees, which Mr. Miller then uses to pay
13 himself a salary.

14 36. In the past, when Operator-Tenants were late in the payment of Rent, Secured Lender
15 threatened to declare a default and enforce its rights, including possible foreclosures of its deeds of
16 trust on the facilities. The failure to pay bed taxes further jeopardizes operations by putting at risk
17 the licenses and permits under which Operator-Tenants operate the Facilities.

18 37. Mr. Miller treats Operator-Tenants and Guarantor as a single enterprise and maintains
19 balance sheets and other financial records consistent with this treatment. These records show that
20 the liabilities of the enterprise are materially greater than its assets. They also show that Operator-
21 Tenants are not paying Rent and meeting other operating expenses while favoring payments to
22 Guarantor and Mr. Miller.

23 38. Mr. Miller, through Guarantor or other similar entities, has on other occasions at other
24 facilities similarly prioritized payments to himself and Guarantor over the payment of rents, which
25 caused mortgage lenders to foreclose their security interests. Owners of those lost their properties
26 and the value inherent in an operating skilled nursing facility under circumstances similar to the

1 circumstances presented here.

2 39. In light of the foregoing, Facility Owners are reasonably concerned that Mr. Miller
3 is again putting his personal interest ahead of Tenant-Operators' obligation to pay Rent, including
4 Base Rent and taxes, and thereby putting Facility Owners' properties at risk of loss. Facility Owners
5 are also reasonably concerned that the Operator-Tenants' insolvency puts the health and safety of
6 each Facility's residents at risk.

7 **D. First Counterclaim Cause of Action: Breach of Leases (Operator-Tenants)**

8 40. The Talbot Lease, Renton Lease, and University Place Lease (together, "**Leases**") are
9 binding and enforceable contracts.

10 41. The Talbot Operator-Tenant has breached the Talbot Lease by failing to pay Rent
11 when due.

12 42. The Renton Operator-Tenant has breached the Renton Lease by failing to pay Rent
13 when due.

14 43. The University Place Operator-Tenant has breached the University Place Lease by
15 failing to pay Rent when due.

16 44. The foregoing breaches of the Leases have harmed Facility Owners.

17 45. Accordingly, Facility Owners are entitled to the following relief:

18 a) Talbot Owner is entitled to a judgment against Talbot Operator-Tenant for
19 breach of contract in an amount to be proven at trial, including reasonable attorney fees and costs as
20 authorized by the Talbot Lease.

21 b) Talbot Owner is also entitled to a Writ of Restitution directing the Sheriff of
22 King County to remove Talbot Operator-Tenant from the Talbot Facility.

23 c) Renton Owner is entitled to a judgment against Renton Operator-Tenant for
24 breach of contract in an amount to be proven at trial, including reasonable attorney fees and costs as
25 authorized by the Renton Lease.

26 d) Renton Owner is also entitled to a Writ of Restitution directing the Sheriff of

1 King County to remove Renton Operator-Tenant from the Renton Facility.

2 e) University Place Owner is entitled to a judgment against University Place
3 Operator-Tenant for breach of contract in an amount to be proven at trial, including reasonable
4 attorney fees and costs as authorized by the University Place Lease.

5 46. Facility Owners reserve the right to seek, if necessary and circumstances warrant, a
6 judicial order declaring each of the Leases terminated.

7 **E. Second Counterclaim Cause of Action: Appointment of Receiver (Operator-Tenants)**

8 47. Facility Owners have a probable right or interest in their respective Facilities.

9 48. Each Facility is in the hands of its respective Operator-Tenant, who are all adverse
10 parties.

11 49. The Facilities' revenue-producing potential is in danger of being lost or materially
12 injured or impaired.

13 50. The health, safety, and welfare of each Facility's residents is immediately
14 jeopardized.

15 51. In an "Event of Default," as defined in each Lease, each Facility Owner is authorized
16 to have appointed "by summary proceeding or otherwise" a receiver of Facility Owner's choice.

17 52. The appointment of a qualified receiver is reasonably necessary and other remedies
18 are inadequate because the Facilities are skilled nursing facilities that are licensed and regulated by
19 the Department.

20 53. Facility Owners anticipate seeking the appointment of a receiver who has been pre-
21 approved by the Department to serve as receiver for licensed skilled nursing facilities. Facility
22 Owners also anticipate seeking the Court's instruction to the receiver to engage an experienced and
23 qualified management company to assist the receiver with daily operations during the receivership.

24 54. Accordingly, pursuant to Lease and RCW 7.60.025, Talbot Owner is entitled to the
25 appointment of a receiver to take possession and control of the Talbot Facility, manage operations
26 of the Talbot Facility on a temporary basis, and transfer said operations to a new qualified and

properly licensed operator.

55. Accordingly, pursuant to the Renton Lease and RCW 7.60.025, Renton Owner is entitled to the appointment of a receiver to take possession and control of the Renton Facility, manage operations of the Renton Facility on a temporary basis, and transfer said operations to a new qualified and properly licensed operator.

56. Accordingly, pursuant to the University Place Lease and RCW 7.60.025, University Place Owner is entitled to the appointment of a receiver to take possession and control of the University Place Facility, manage operations of the University Place Facility on a temporary basis, and transfer said operations to a new qualified and properly licensed operator.

F. Third Counterclaim Cause of Action: Piercing Corporate Veil (William Miller)

57. Mr. Miller is the owner and Manager of each Operator-Tenant and Guarantor. He treats Operator-Tenants and Guarantor as a single enterprise. Mr. Miller, Operator-Tenants, and Guarantor are alter egos of one another.

58. Mr. Miller has abused the corporate form by prioritizing payments to Guarantor and his own personal compensation ahead of the payment of Rent and other expenses.

59. Accordingly, Facility Owners are entitled to an order to pierce the corporate veil and hold Mr. Miller personally liable for Operator-Tenants' breaches of their respective Leases.

XI. THIRD PARTY CLAIM

BY WAY OF FURTHER RESPONSE, Facility Owners allege and claim as follows as their third-party claim against Guarantor:

A. Parties

60. Talbot Owner, third-party plaintiff, is a Delaware limited liability company. Talbot Owner owns the Talbot Facility.

61. Renton Owner, third-party plaintiff, is a Delaware limited liability company. Renton Owner owns the Renton Facility.

62. University Place Owner, third-party plaintiff, is a Delaware limited liability

1 company. University Place Owner owns the University Place Facility.

2 63. Guarantor, third-party defendant, is a Delaware limited liability company. On
3 information and belief, Guarantor's principal place of business is in Puyallup, Washington.

4 **B. Jurisdiction and Venue**

5 64. This Court has personal jurisdiction over the parties to this third-party claim.

6 65. This Court has subject matter jurisdiction over this third-party claim.

7 66. King County is a proper venue for this third-party claim.

8 **C. Facts**

9 67. As assurance and material inducement to Talbot Owner to lease the Talbot Facility
10 to Talbot Operator-Tenant, Guarantor executed an unconditional and irrevocable guaranty of Talbot
11 Operator-Tenant's payment and performance under the Talbot Lease ("**Talbot Guaranty**").

12 68. Talbot Operator-Tenant has breached the Talbot Lease as set forth above.

13 69. As assurance and material inducement to Renton Owner to lease the Renton Facility
14 to Renton Operator-Tenant, Guarantor executed an unconditional and irrevocable guaranty of
15 Renton Operator-Tenant's payment and performance under the Renton Lease ("**Renton**
16 **Guaranty**").

17 70. Renton Operator-Tenant has breached the Renton Lease as set forth above.

18 71. As assurance and material inducement to University Place Owner to lease the
19 University Place Facility to University Place Operator-Tenant, Guarantor executed an unconditional
20 and irrevocable guaranty of University Place Operator-Tenant's payment and performance under the
21 University Place Lease ("**University Place Guaranty**").

22 72. University Place Operator-Tenant has breached the University Place Lease as set
23 forth above.

24 **D. Third-Party Cause of Action: Enforcement of Guaranty**

25 73. The Talbot Guaranty, Renton Guaranty, and University Place Guaranty (together,
26 "**Guaranties**") are binding and enforceable contracts.

1 or equity; and

2 7. Such other relief as the Court deems just and proper.

3 Dated: March 7, 2024

SNELL & WILMER L.L.P.

4
5 By: s/Amit D. Ranade

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10 Attorneys for Defendants

11 4872-9892-4970.3

EXHIBIT C

Hon. Nicholas B. Straley

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

TALBOT RD. S I HEALTHCARE LLC,
SOUTHWEST 2ND STREET
HEALTHCARE LLC, and BRIDGEPORT
WAY W HEALTHCARE LLC,

Plaintiffs,

v.

SAMUEL GOLDNER, WA3
PROPERTIES TALBOT LLC, WA3
PROPERTIES RENTON LLC, WA3
PROPERTIES UNIV LLC, WA3 OP
RENTON LLC, WA3 OP TALBOT LLC,
WA3 UNIV LLC, WA3 OP UNIV LLC,
and GOLDNER CAPITAL
MANAGEMENT, LLC,

Defendants.

No. 24-2-03923-6 KNT

PLAINTIFFS' ANSWER AND
AFFIRMATIVE DEFENSES TO
DEFENDANTS' COUNTERCLAIMS
AND THIRD-PARTY COMPLAINT

WA3 PROPERTIES TALBOT LLC, WA3
PROPERTIES RENTON LLC, WA3
PROPERTIES UNIV LLC,

Counter-Claim Plaintiffs,

v.

TALBOT RD. S I HEALTHCARE LLC,
SOUTHWEST 2ND STREET
HEALTHCARE
LLC, AND BRIDGEPORT WAY W
HEALTHCARE LLC,

Counter-Claim Defendants.

1 WA3 PROPERTIES TALBOT LLC, WA3
2 PROPERTIES RENTON LLC, WA3
3 PROPERTIES UNIV LLC,

4 Third-Party Plaintiffs,

5 v.

6 WILLIAM MILLER, an individual,

7 Third-Party Defendant.

8 Counterclaim Defendants/Plaintiffs (“Plaintiffs”) and Third-Party Defendant
9 answer Defendants, Counterclaim Plaintiffs, and Third-Party Plaintiffs’ Counterclaims
10 and Third-Party Complaint as follows:

11 I. COUNTERCLAIMS

12 A. Parties

13 1. In response to paragraph 1, Plaintiffs admit that Talbot Owner owns the
14 Talbot Facility. Plaintiffs admit that Talbot Owner was a Delaware Limited Liability
15 Company but deny that the entity still exists because according to the Delaware Secretary
16 of State, it has been cancelled since July 2023 for failure to appoint a registered agent.

17 2. In response to paragraph 2, Plaintiffs admit that Renton Owner owns the
18 Renton Facility. Plaintiffs admit that the Renton Owner was a Delaware Limited Liability
19 Company but deny that the entity still exists because according to the Delaware Secretary
20 of State, it has been cancelled since July 2023 for failure to appoint a registered agent.

21 3. In response to paragraph 3, Plaintiffs admit that University Place Owner
22 owns the University Place Facility. Plaintiffs admit that the University Place Owner was a
23 Delaware Limited Liability Company but deny that the entity still exists because
24 according to the Delaware Secretary of State, it has been cancelled since July 2023 for
25 failure to appoint a registered agent.

26 4. In response to paragraph 4, Plaintiffs admit the allegations.

5. In response to paragraph 5, Plaintiffs admit the allegations.

6. In response to paragraph 6, Plaintiffs admit the allegations.

7. In response to paragraph 7, Plaintiffs admit the allegations.

B. Jurisdiction and Venue

8. In response to paragraph 8, this paragraph states legal conclusions to which no response is required. To the extent a response is required, Plaintiffs deny the allegations.

9. In response to paragraph 9, this paragraph states legal conclusions to which no response is required. To the extent a response is required, Plaintiffs deny the allegations.

10. In response to paragraph 10, this paragraph states legal conclusions to which no response is required. To the extent a response is required, Plaintiffs deny the allegations.

C. Facts

1. Talbot Facility – Failure to Pay Rent to Anyone

11. In response to paragraph 11, Plaintiffs admit the allegations.

12. In response to paragraph 12, Plaintiffs admit the allegations.

13. In response to paragraph 13, the Talbot Lease described in this paragraph speaks for itself in its entirety, and Plaintiffs deny any allegations inconsistent with its terms.

14. In response to paragraph 14, the Talbot Lease described in this paragraph speaks for itself in its entirety, and Plaintiffs deny any allegations inconsistent with its terms.

15. In response to paragraph 15, the Talbot Lease described in this paragraph speaks for itself in its entirety, and Plaintiffs deny any allegations inconsistent with its terms.

1 16. In response to paragraph 16, Plaintiffs admit that a Lease Payment
2 Agreement dated September 7, 2023 was entered into between Merchants Bank of
3 Indiana, Talbot Owner, Plaintiff Talbot Rd S I Healthcare LLC and eCapital Healthcare
4 Corp. The Lease Payment Agreement described in this paragraph speaks for itself in its
5 entirety, and Plaintiffs deny any allegations inconsistent with its terms. Plaintiffs deny all
6 remaining allegations.

7 17. In response to paragraph 17, the Talbot Lease described in this paragraph
8 speaks for itself in its entirety, and Plaintiffs deny any allegations inconsistent with its
9 terms.

10 18. In response to paragraph 18, the Talbot Lease described in this paragraph
11 speaks for itself in its entirety, and Plaintiffs deny any allegations inconsistent with its
12 terms.

13 19. In response to paragraph 19, Plaintiffs deny the allegations.

14 20. In response to paragraph 20, the Talbot Lease described in this paragraph
15 speaks for itself in its entirety, and Plaintiffs deny any allegations inconsistent with its
16 terms. Plaintiffs deny the remaining allegations.

17 **2. Renton Facility – Failure to Pay Rent to Anyone**

18 21. In response to paragraph 21, Plaintiffs admit the allegations.

19 22. In response to paragraph 22, Plaintiffs admit the allegations.

20 23. In response to paragraph 23, the Talbot and Renton Leases described in this
21 paragraph speaks for themselves in their entirety, and Plaintiffs deny any allegations
22 inconsistent with their terms.

23 24. In response to paragraph 24, Plaintiffs admit that a Lease Payment
24 Agreement dated September 7, 2023 was entered into between Merchants Bank of
25 Indiana, Renton Owner, Plaintiff Southwest 2nd Street Healthcare LLC, and eCapital
26 Healthcare Corp. The Lease Payment Agreement described in this paragraph speaks for

1 itself in its entirety, and Plaintiffs deny any allegations inconsistent with its terms.

2 Plaintiffs deny all remaining allegations.

3 25. In response to paragraph 25, Plaintiffs deny the allegations.

4 26. In response to paragraph 26, the Renton Lease described in this paragraph
5 speaks for itself in its entirety, and Plaintiffs deny any allegations inconsistent with its
6 terms. Plaintiffs deny the remaining allegations.

7 **3. University Place Facility – Failure to Pay Rent to Anyone**

8 27. In response to paragraph 27, Plaintiffs admit the allegations.

9 28. In response to paragraph 28, Plaintiffs admit the allegations.

10 29. In response to paragraph 29, the Talbot and University Place Leases
11 described in this paragraph speaks for themselves in their entirety, and Plaintiffs deny any
12 allegations inconsistent with their terms.

13 30. In response to paragraph 30, Plaintiffs admit that a Lease Payment
14 Agreement dated September 7, 2023 was entered into between Merchants Bank of
15 Indiana, University Place Owner, Plaintiff Bridgeport Way W Healthcare LLC, and
16 eCapital Healthcare Corp. The Lease Payment Agreement described in this paragraph
17 speaks for itself in its entirety, and Plaintiffs deny any allegations inconsistent with its
18 terms. Plaintiffs deny all remaining allegations.

19 31. In response to paragraph 31, Plaintiffs deny the allegations.

20 32. In response to paragraph 32, the University Place Lease described in this
21 paragraph speaks for itself in its entirety, and Plaintiffs deny any allegations inconsistent
22 with its terms. Plaintiffs deny the remaining allegations.

23 **4. Insolvency and Abuse of Corporate Forms**

24 33. In response to paragraph 33, Plaintiffs deny the allegations.

25 34. In response to paragraph 34, Plaintiffs deny the allegations.

35. In response to paragraph 35, Plaintiffs admit that Operator-Tenants paid Guarantor's management fees, which covered, among other things, employee salaries. Plaintiffs deny the remaining allegations in paragraph 35.

36. In response to paragraph 36, Plaintiffs deny the allegations.

37. In response to paragraph 37, the first sentence of this paragraph states a legal conclusion to which no response is required. To the extent one is required, Plaintiffs deny the allegations. Plaintiffs deny the remaining allegations.

38. In response to the first sentence of paragraph 38, Plaintiffs lack knowledge or information regarding the "other facilities" referenced and on that basis, deny the allegation. Plaintiffs deny that mortgage lenders foreclosed their security interests. Plaintiffs deny all remaining allegations in paragraph 38.

39. In response to paragraph 39, Plaintiffs lack knowledge regarding Counterclaimants' purported concerns and therefore deny them. Plaintiffs deny that Mr. Miller is putting his personal interests ahead of Tenant-Operators' obligations and deny that the Facility Owners' properties are at risk of loss. Plaintiffs deny all remaining allegations in paragraph 39.

D. First Counterclaim Cause of Action: Breach of Leases (Operator-Tenants)

40. In response to paragraph 40, this paragraph states a legal conclusion to which no response is required. To the extent one is required, Plaintiffs deny the allegations.

41. In response to paragraph 41, Plaintiffs deny the allegations.

42. In response to paragraph 42, Plaintiffs deny the allegations.

43. In response to paragraph 43, Plaintiffs deny the allegations.

44. In response to paragraph 44, Plaintiffs deny the allegations.

45. In response to paragraph 45, Plaintiffs deny that Counterclaimants are entitled to any of the relief requested in subparts a) through e).

1 46. In response to paragraph 46, Plaintiffs deny the allegations.

2 **E. Second Counterclaim Cause of Action: Appointment of Receiver (Operator-**
 3 **Tenants)**

4 47. In response to paragraph 47, this paragraph states a legal conclusion to
 5 which no response is required. To the extent one is required, Plaintiffs deny the
 6 allegations.

7 48. In response to paragraph 48, this paragraph states a legal conclusion to
 8 which no response is required. To the extent one is required, Plaintiffs deny the
 9 allegations.

10 49. In response to paragraph 49, Plaintiffs deny the allegations.

11 50. In response to paragraph 50, Plaintiffs deny the allegations.

12 51. In response to paragraph 51, the Leases speak for themselves in their
 13 entirety, and Plaintiffs deny any allegations inconsistent with their terms.

14 52. In response to paragraph 52, Plaintiffs admit the Facilities are skilled
 15 nursing facilities licensed and regulated by the Department. Plaintiffs deny the remaining
 16 allegations.

17 53. In response to paragraph 53, Plaintiffs lack knowledge regarding
 18 Counterclaimants theoretical plans and therefore deny the allegations and note that
 19 Counterclaimants' motion to appoint a receiver has been denied.

20 54. In response to paragraph 54, this paragraph states a legal conclusion to
 21 which no response is required, to the extent one is required, Plaintiffs deny the allegations
 22 and note that Counterclaimants' motion to appoint a receiver has been denied.

23 55. In response to paragraph 55, this paragraph states a legal conclusion to
 24 which no response is required, to the extent one is required, Plaintiffs deny the allegations
 25 and note that Counterclaimants' motion to appoint a receiver has been denied.
 26

56. In response to paragraph 56, this paragraph states a legal conclusion to which no response is required, to the extent one is required, Plaintiffs deny the allegations and note that Counterclaimants' motion to appoint a receiver has been denied.

F. Third Counterclaim Cause of Action: Piercing Corporate Veil (William Miller)

57. In response to paragraph 57, Plaintiffs admit the first sentence of the paragraph. Plaintiffs deny that Mr. Miller treats Operator-Tenants and Guarantor as a single enterprise. The third sentence in paragraph 57 states a legal conclusion to which no response is required. To the extent one is required, Plaintiffs deny the allegations.

58. In response to paragraph 58, this paragraph states legal conclusions to which no response is required. To the extent one is required, Plaintiffs deny the allegations.

59. In response to paragraph 59, Plaintiffs deny the allegations.

II. THIRD PARTY CLAIM

A. Parties

60. In response to paragraph 60, William Miller ("Miller") admits the second sentence of the paragraph. Miller lacks knowledge or information sufficient to admit or deny the remaining allegations in paragraph 60 and on that basis denies them.

61. In response to paragraph 61, Miller admits the second sentence of the paragraph. Miller lacks knowledge or information sufficient to admit or deny the remaining allegations in paragraph 61 and on that basis denies them.

62. In response to paragraph 62, Miller admits the second sentence of the paragraph. Miller lacks knowledge or information sufficient to admit or deny the remaining allegations in paragraph 62 and on that basis denies them.

63. In response to paragraph 63, Miller admits the allegations.

1 **B. Jurisdiction and Venue**

2 64. In response to paragraph 64, this paragraph states legal conclusions to
3 which no response is required. To the extent one is required, Miller denies the allegations.

4 65. In response to paragraph 65, this paragraph states legal conclusions to
5 which no response is required. To the extent one is required, Miller denies the allegations.

6 66. In response to paragraph 66, this paragraph states legal conclusions to
7 which no response is required. To the extent one is required, Miller denies the allegations.

8 **C. Facts**

9 67. In response to paragraph 67, Miller admits that Vertical Health Services
10 (“VHS”) executed a guaranty in connection with the Talbot Lease. That guaranty speaks
11 for itself in its entirety and Miller denies any allegations inconsistent with its terms.
12 Miller denies all remaining allegations in paragraph 67.

13 68. In response to paragraph 68, Miller incorporates the above responses and
14 denies the allegations.

15 69. In response to paragraph 69, Miller admits that VHS executed a guaranty in
16 connection with the Renton Lease. That guaranty speaks for itself in its entirety and
17 Miller denies any allegations inconsistent with its terms. Miller denies all remaining
18 allegations in paragraph 69.

19 70. In response to paragraph 70, Miller incorporates the above responses and
20 denies the allegations.

21 71. In response to paragraph 71, Miller admits that VHS executed a guaranty in
22 connection with the University Place Lease. That guaranty speaks for itself in its entirety
23 and Miller denies any allegations inconsistent with its terms. Miller denies all remaining
24 allegations in paragraph 71.

25 72. In response to paragraph 72, Miller incorporates the above responses and
26 denies the allegations.

D. Third-Party Cause of Action: Enforcement of Guaranty

73. In response to paragraph 73, this paragraph states legal conclusions to which no response is required. To the extent one is required, Miller denies the allegations.

74. In response to paragraph 74, Miller admits that VHS executed guaranties in connection with the Leases. Those guaranties speaks for themselves in their entirety and Miller denies any allegations inconsistent with their terms. The remainder of the paragraph states legal conclusions to which no response is required. To the extent one is required, Miller denies the allegations.

75. In response to paragraph 75, Miller admits that VHS executed guaranties in connection with the Leases. Those guaranties speaks for themselves in their entirety and Miller denies any allegations inconsistent with their terms. The remainder of the paragraph states legal conclusions to which no response is required. To the extent one is required, Miller denies the allegations.

76. In response to paragraph 76, Miller admits that VHS executed guaranties in connection with the Leases. Those guaranties speaks for themselves in their entirety and Miller denies any allegations inconsistent with their terms. The remainder of the paragraph states legal conclusions to which no response is required. To the extent one is required, Miller denies the allegations.

77. In response to paragraph 77, Miller denies the allegations.

78. In response to paragraph 78, Miller denies the allegations.

III. PRAYER FOR RELIEF

1. Plaintiffs deny that Defendants/Counterclaimants/Third-Party Plaintiffs are entitled to any of their requested relief.

IV. PLAINTIFFS' AFFIRMATIVE DEFENSES

Plaintiffs assert the following defenses to Defendants/Counterclaimants/Third-Party Plaintiffs' Counterclaims and Third-Party Complaint.

1 1. Defendants/Counterclaimants/Third-Party Plaintiffs have failed to state a
2 claim upon which relief can be granted.

3 2. Defendants/Counterclaimants/Third-Party Plaintiffs' injuries, if any, were
4 sustained as a direct and proximate result of Defendants/Counterclaimants/Third-Party
5 Plaintiffs' own conduct.

6 3. Defendants/Counterclaimants/Third-Party Plaintiffs have failed to mitigate
7 their damages.

8 4. Defendants/Counterclaimants/Third-Party Plaintiffs' claims and
9 counterclaims, in whole or in part, are barred by the doctrine of estoppel.

10 5. Defendants/Counterclaimants/Third-Party Plaintiffs' claims and
11 counterclaims, in whole or in part, are barred by the doctrine of waiver.

12 6. Defendants/Counterclaimants/Third-Party Plaintiffs' claims and
13 counterclaims, in whole or in part, are barred by the doctrine of laches.

14 7. Defendants/Counterclaimants/Third-Party Plaintiffs' claims and
15 counterclaims, in whole or in part, are barred by the doctrine of unclean hands.

16 8. Upon information and belief, Defendants/Counterclaimants/Third-Party
17 Plaintiffs may be responsible for all or a portion of their damages, if any.

18 9. Defendants/Counterclaimants/Third-Party Plaintiffs' damages, if any, were
19 caused by individuals and entities over which the Plaintiffs, Counterclaim Defendants, and
20 Third-Party Defendant had no control.

21 10. Any sums allegedly due are subject to setoff.

22 By stating any of the defenses set forth above, Counterclaim Defendants and
23 Third-Party Defendant reserve the right to plead additional defenses as may be warranted
24 by ongoing discovery.

25 By stating any of the defenses set forth above, Counterclaim Defendants and
26 Third-Party Defendant do not assume any burden they do not have under the law.

By stating any of the defenses set forth above, Counterclaim Defendants and Third-Party Defendant reserve the right to amend their answer and to assert additional defenses made known to them through investigation and discovery. Counterclaim Defendants and Third-Party Defendant likewise reserve the right to argue legal theories in addition to or in lieu of those specifically identified here as the facts in this matter may warrant, including, without limitation, additional or further facts hereafter learned through discovery or during the course of this action.

V. PLAINTIFFS' PRAYER FOR RELIEF

WHEREFORE, having answered Defendants/Counterclaimants/Third-Party-Plaintiffs' Counterclaims and Third-Party Complaint, Plaintiffs, Counterclaim Defendants, and Third-Party Defendant request the following relief:

- A. For dismissal of the Counterclaims and Third-Party Complaint, with prejudice;
- B. For an award of reasonable attorneys' fees and costs; and
- C. For such other and further relief as the Court deems just and equitable.

DATED this 1st day of April, 2024.

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/ Leslie E. Swanson

Daniel M. Weiskopf, WSBA No. 44941

Leslie E. Swanson, WSBA No. 50792

Charles Wittmann-Todd, WSBA No. 54229

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Seattle, Washington 98101

(206) 467-1816

dweiskopf@mcnaul.com

lswanson@mcnaul.com

cwittmann todd@mcnaul.com

*Attorneys for Plaintiffs, Counterclaim Defendants
and Third-Party Defendant*

DECLARATION OF SERVICE

On April 1, 2024, I caused to be served a true and correct copy of the foregoing document upon counsel of record, at the address stated below, via King County e-Service and email:

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 Amit D. Ranade, WSBA No. 34878
 Rachael E. Clark, WSBA No. 57277
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aranade@swlaw.com
bduncan@swlaw.com
reclark@swlaw.com
bpartridge@swlaw.com (asst.)
*Attorneys for Defendants, Counter-Claim
 Defendants and Third-Party Plaintiffs*

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amy.harris@atg.wa.gov
*Attorneys for Department of Social &
 Health Services*

1 I declare under penalty of perjury under the laws of the State of Washington that
2 the foregoing is true and correct.

3 Dated this 1st day of April, 2024, at Seattle, Washington.

4 By: s/ Jennifer Hickman
5 Jennifer Hickman, *Legal Assistant*
6 jhickman@mcnaul.com
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EXHIBIT D

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6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **IN AND FOR THE COUNTY OF KING**

8 TALBOT RD. S I HEALTHCARE LLC,
9 SOUTHWEST 2ND STREET
10 HEALTHCARE LLC, and BRIDGEPORT
11 WAY W HEALTHCARE LLC,

12 Plaintiffs,

13 vs.

14 SAMUEL GOLDNER, WA3 PROPERTIES
15 TALBOT LLC, WA3 PROPERTIES
16 RENTON LLC, WA3 PROPERTIES UNIV
17 LLC, WA3 OP RENTON LLC, WA3 OP
18 UNIV LLC AND GOLDNER CAPITAL
19 MANAGEMENT, LLC,

20 Defendants.

21 WA3 PROPERTIES TALBOT LLC, WA3
22 PROPERTIES RENTON LLC, WA3
23 PROPERTIES UNIV LLC,

Counter-Claim Plaintiffs,

vs.

TALBOT RD. S I HEALTHCARE LLC,
SOUTHWEST 2ND STREET
HEALTHCARE LLC, AND BRIDGEPORT
WAY W HEALTHCARE LLC,

Counter-Claim Defendants.

No. 24-2-03923-6 KNT

**NOTICE OF BANKRUPTCY FILING
AND STAY**

Clerk's Action Required

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WA3 PROPERTIES TALBOT LLC, WA3
PROPERTIES RENTON LLC, WA3
PROPERTIES UNIV LLC,

Third-Party Plaintiffs,

vs.

WILLIAM MILLER, an individual,

Third-Party Defendant.

TO: CLERK OF THE COURT;

AND TO: ALL PARTIES OF RECORD.

YOU ARE HEREBY GIVEN notice that on October 2, 2024, Defendant Goldner Capital Management (“GCM”), declared bankruptcy in the United States Bankruptcy Court for the Eastern District of New York in Case No. 8-24-73789-ast. Accordingly, pursuant to 11 U.S.C. § 362(a)(1), this proceeding, as it relates to GCM, and all claims against GCM are hereby stayed. A copy of the Notice is enclosed as **Exhibit 1**.

DATED this 2nd day of October, 2024.

DICKSON FROHLICH PHILLIPS BURGESS

/s/ Alexander Wisbey

ROBERT P. DICKSON, WSBA No. 39770

ALEXANDER J.R. WISBEY, WSBA No. 49696

BRIAN C. KELLETT, WSBA No. 52032

Attorneys for Defendants/Counterclaim Plaintiffs/Third-Party Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that on the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
Leslie Ellen Swanson Daniel Mark Weiskopf Charles Wittmann-Todd MCNAUL EBEL NAWROT & HELGREN 600 University Street, Suite 2700 Seattle, WA 98101 <i>Attorneys for Plaintiffs, Counterclaim Defendants, and Third-Party Defendant William Miller</i>	<input type="checkbox"/> PROCESS SERVER <input type="checkbox"/> COURIER SERVICE: <input type="checkbox"/> U.S. MAIL <input checked="" type="checkbox"/> E-SERVICE (if available) <input checked="" type="checkbox"/> EMAIL: lswanson@mcnaul.com dweiskopf@mcnaul.com cwittmanntodd@mcnaul.com
Andrew Ramiro Escobar Ashley J. Sherwood SEYFARTH SHAW LLP 999 Third Avenue, Suite 4700 Seattle, WA 98104 John D. Waller David Patton DINSMORE & SHOHL 211 N. Pennsylvania Street, Suite 1800 Indianapolis, IN 46204 <i>Attorneys for Intervenor Merchants Bank of Indiana</i>	<input type="checkbox"/> PROCESS SERVER <input type="checkbox"/> COURIER SERVICE: <input type="checkbox"/> U.S. MAIL <input checked="" type="checkbox"/> E-SERVICE (if available) <input checked="" type="checkbox"/> EMAIL: aescobar@seyfarth.com asherwood@seyfarth.com <input type="checkbox"/> PROCESS SERVER <input type="checkbox"/> COURIER SERVICE: <input type="checkbox"/> U.S. MAIL <input checked="" type="checkbox"/> E-SERVICE (if available) <input checked="" type="checkbox"/> EMAIL: john.waller@dinsmore.com david.patton@dinsmore.com
Christopher T. Wion SUMMIT LAW GROUP 315 5th Avenue, Suite 1000 Seattle, WA 98104 <i>Attorney for Intervenor eCapital Healthcare Corp.</i>	<input type="checkbox"/> PROCESS SERVER <input type="checkbox"/> COURIER SERVICE: <input type="checkbox"/> U.S. MAIL <input checked="" type="checkbox"/> E-SERVICE (if available) <input checked="" type="checkbox"/> EMAIL: chrisw@summitlaw.com

1 Dated this this 2nd day of October, 2024 at Seattle, Washington.

2
3 /s Louisa Florio

4 Louisa M. Florio, Paralegal

Exhibit 1

United States Bankruptcy Court
Eastern District of New York

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 11 of the United States Bankruptcy Code, entered on 10/02/2024 at 10:49 AM and filed on 10/02/2024.

GOLDNER CAPITAL MANAGEMENT LLC

20 East Sunrise Highway
Valley Stream, NY 11581
Tax ID / EIN: 82-4899106



The case was filed by the debtor's attorney:

Gary F. Herbst

LaMonica Herbst & Maniscalco, LLP
3305 Jerusalem Avenue, Suite 201
Wantagh
Wantagh, NY 11793
(516) 826-6500

The case was assigned case number 8-24-73789-ast to Judge Alan S. Trust.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <https://ecf.nyeb.uscourts.gov/> or at the Clerk's Office, 290 Federal Plaza, Central Islip, NY 11722.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Robert A. Gavin, Jr.
Clerk, U.S. Bankruptcy Court

Exhibit 1, pg. 1 of 2

PACER Service Center			
Transaction Receipt			
10/02/2024 12:04:24			
PACER Login:	apwofse7	Client Code:	apw-goldner
Description:	Notice of Filing	Search Criteria:	8-24-73789-ast
Billable Pages:	1	Cost:	0.10

EXHIBIT E

Hon. Nicholas Straley
Friday, November 15, 2024
9:00 a.m.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

TALBOT RD. S I HEALTHCARE LLC,
SOUTHWEST 2ND STREET HEALTHCARE
LLC, and BRIDGEPORT WAY W
HEALTHCARE LLC,

Plaintiffs,

vs.

SAMUEL GOLDNER, WA3 PROPERTIES
TALBOT LLC, WA3 PROPERTIES RENTON
LLC, WA3 PROPERTIES UNIV LLC, WA3 OP
RENTON LLC, WA3 OP UNIV LLC AND
GOLDNER CAPITAL MANAGEMENT, LLC,

Defendants.

NO. 24-2-03923-6 KNT

**AMENDED CR 56 PARTIAL MOTION
FOR SUMMARY JUDGMENT TO
DISMISS SAMUEL GOLDNER AND
WA3 UNIV LLC**

1 WA3 PROPERTIES TALBOT LLC, WA3
 2 PROPERTIES RENTON LLC, WA3
 3 PROPERTIES UNIV LLC,

4 Counter-Claim Plaintiffs,

5 vs.

6 TALBOT RD. S I HEALTHCARE LLC,
 7 SOUTHWEST 2ND STREET HEALTHCARE
 8 LLC, AND BRIDGEPORT WAY W
 9 HEALTHCARE LLC,

10 Counter-Claim Defendants.

11 WA3 PROPERTIES TALBOT LLC, WA3
 12 PROPERTIES RENTON LLC, WA3
 13 PROPERTIES UNIV LLC,

14 Third-Party Plaintiffs,

15 vs.

16 WILLIAM MILLER, an individual,

17 Third-Party Defendant.

18 I. REQUESTED RELIEF

19 SAMUEL GOLDNER and WA3 OP UNIV LLC, (“Defendants”), by and through their
 20 undersigned counsel, move this Court for an Order under CR 56 dismissing Samuel Goldner
 21 personally and WA3 Univ LLC as a Defendants in this matter. Mr. Goldner personally should be
 22 dismissed because (1) it is undisputed that he was not in contractual privity with Plaintiffs
 23 personally and (2) there are no allegations against Mr. Goldner that would justify piercing the
 corporate veil nor has the corporate veil been pierced. WA3 Univ LLC should be dismissed

1 because it is a non-existent entity that was mistakenly included in a contract due to a typographical
2 error. WA3 Op Univ LLC is the proper party named instead of WA3 Univ LLC.

3 II. STATEMENT OF FACTS

4 The Complaint in this matter names Samuel Goldner as a Defendant in his individual
5 capacity on the basis that Mr. Goldner may be personally liable for contracts he signed on behalf
6 of purportedly canceled entities: WA3 Properties Talbot LLC, WA3 Properties Renton LLC, WA3
7 Op Renton LLC, WA3 Properties Univ LLC, WA3 Op Renton LLC, Defendant WA 3 Op Univ
8 LLC. Compl. ¶¶ 3, 6, 9, 16, and 19. Plaintiff also claims Mr. Goldner is personally liable for
9 contracts signed on behalf of WA3 Univ LLC, described as a non-existent entity. *See* Compl. ¶18.
10 Defendant agrees that there is no entity named WA 3 Univ LLC, rather, the contract for that entity
11 entitled “Operations Transfer Agreement” was intended to be on behalf of WA 3 Op Univ LLP,
12 and that the omission of “Op” was a scrivener’s error. *See* Goldner Decl. ¶ 2. This is consistent
13 with Mr. Goldner’s Answer, which stated: “Defendants admit that Samuel Goldner executed the
14 University Place OTA on behalf of WA3 Op Univ LLC. Defendants deny all other allegations in
15 this paragraph. By way of further answer, Defendants state that references in the University Place
16 OTA to ‘WA3 Univ LLC’ appear to be a scrivener’s error.” *See* Answer at ¶ 18.

17 On July 25, 2024, Defense counsel sent Plaintiff’s counsel a letter attaching entity details
18 from the State of Delaware for each of the entities purportedly canceled, which showed that they
19 were in good standing. Declaration of Alexander Wisbey (“Wisb ey Decl.”) dated July 30, 2024,
20 ¶ 29, Ex. 10. Defense counsel requested that Plaintiffs state a basis for continuing to sue Mr.
21 Goldner, or else dismiss Mr. Goldner from the case. Plaintiffs failed to do so. *Id.* As there is no
22 legal basis to maintain this lawsuit against Mr. Goldner, this Motion follows.

23 III. ISSUES PRESENTED

1 1. Should the Court dismiss Samuel Goldner in his individual capacity as a Defendant
2 when he did not take any actions in his personal capacity and when Plaintiffs have not successfully
3 pierced the corporate veil? YES.

4 2. Should the Court dismiss the non-existent entity, WA3 Univ LLC, when that entity
5 was never actually created and was merely included as a party to this lawsuit because of a
6 scrivener's error? YES.

7 //

8 //

9 IV. EVIDENCE RELIED ON

10 The pleadings and records previously filed herein, and the Declaration of Alexander
11 Wisbey, filed 7/30/2024, and the Declaration of Samuel Goldner, filed 8/30/2024.

12 V. ARGUMENT

13 A. Mr. Goldner Should Be Dismissed as a Party Without Prejudice.

14 Plaintiffs mistakenly believe that there is personal liability for members of LLCs, including
15 Mr. Goldner, solely based on the fact he signed contracts for valid entities. Washington case law
16 makes clear that the mere existence of a corporate entity, even if controlled by a single shareholder,
17 is not sufficient to justify piercing the corporate veil by itself. The corporate entity will generally
18 be respected unless there is clear evidence of wrongdoing, such as fraud, misrepresentation, or
19 manipulation of the corporation to the benefit of the shareholder and to the detriment of creditors.
20 *Truckweld Equipment Co., Inc. v. Olson*, 26 Wn. App. 638, 618 P.2d 1017 (1980); *Plese-Graham,*
21 *LLC v. Loshbaugh*, 164 Wn. App. 530, 269 P.3d 1038 (2011). In short, there must be an abuse of
22 the corporate form such that recognizing the corporate entity would perpetrate a fraud or manifest
23 injustice. *Northwest Cascade, Inc. v. Unique Const., Inc.*, 187 Wn. App. 685, 351 P.3d 172 (2015);

1 *Block v. Olympic Health Spa, Inc.*, 24 Wn. App. 938, 604 P.2d 1317 (1979). To successfully pierce
 2 the corporate veil, it is necessary to establish certain factors, including fraudulent conveyances by
 3 the corporation or its members. *Morgan v. Burks*, 93 Wn.2d 580, 611 P.2d 751 (1980).

4 *Meisel v. M & N Modern Hydraulic Press Co.* is instructive. In that case, the Court explained
 5 that the party seeking to pierce the corporate veil has the burden of proof and must establish that: “the
 6 corporate form must be intentionally used to violate or evade a duty” and “disregard must be ‘necessary
 7 and required to prevent unjustified loss to the injured party.’” *Meisel v. M & N Mod. Hydraulic Press*
 8 *Co.*, 97 Wn.2d 403, 410, 645 P.2d 689 (1982) (quoting *Morgan v. Burks*, 93 Wn.2d 580, 585, 611 P.2d
 9 751 (1980)). The *Meisel* Court made clear that it is completely inappropriate to “attempt[] to work
 10 backwards.” *Id.*

11 It is also important to note that whether the corporate veil should be pierced is a question for
 12 the jury—not for the attorneys or the parties. See *Shell Oil Co. v. Livingston Fertilizer & Chem. Co.*, 9
 13 Wn. App. 596, 600, 513 P.2d 861(1973) (citing *Rena-Ware Distributors, Inc. v. State*, 77 Wn.2d 514,
 14 463 P.2d 622 (1970) and *Von Herberg v. Von Herberg*, 6 Wn.2d 100, 106 P.2d 737 (1940)).

15 In this case, the sole allegation against Mr. Goldner is that he signed contracts on behalf of
 16 entities that were cancelled, or non-existent. With respect to the contract Mr. Goldner signed on
 17 behalf of the purportedly non-existent entity WA3 Univ LLC, this was a scrivener’s error, and the
 18 intended entity name was WA3 Op Univ LLC. Defendants acknowledge that WA3 Op Univ LLC,
 19 along with WA3 Properties Talbot LLC, WA3 Properties Renton LLC, WA3 Op Renton LLC,
 20 WA3 Properties Univ LLC, and WA3 Op Renton LLC, were cancelled for a period of time due to
 21 delayed reporting. They have all since been reinstated and are in good standing. Thus, the only
 22 question is whether the Court has a basis for disregarding a corporate form solely based on the fact
 23

1 these entities were cancelled for a time. Plaintiffs have failed to set forth, and Defendants are
2 unaware of, any case law to support piercing the corporate veil under such circumstances.

3 Defendants further dispute that a cancelled entity, in and of itself, is sufficient “clear”
4 evidence of corporate abuse sufficient to hold an individual member liable. There are many reasons
5 an entity may be canceled outside of fraud or other wrongful acts by a member. Plaintiffs have not
6 alleged any wrongdoing whatsoever on behalf of Mr. Goldner, and therefore, any basis for piercing
7 the corporate veil fails. Plaintiffs’ claims against Mr. Goldner must be dismissed. And, of course,
8 there is no evidence that Mr. Goldner entered into any contracts with Plaintiffs in his personal
9 capacity—because he never did so. Mr. Goldner is involved with the entity Defendants. That does
10 not mean that he has personal liability. The entire purpose of entities like LLCs is to limit liability.
11 *See generally Chadwick Farms Owners Ass’n v. FHC LLC*, 166 Wn.2d 178, 187, 207 P.3d 1251
12 (2009), as corrected (Sept. 14, 2009). Now that all of the entities are in good standing there is no
13 legal basis to maintain a cause of action against Mr. Goldner personally. The claims against him
14 must be dismissed.¹

15 **B. WA3 Univ LLC Was Mistakenly Included in a Contract and Should Be**
16 **Dismissed as a Party Because It Never Existed and Was Only Included Because**
of a Typo.

17 Because WA3 Univ LLC has never actually existed and was only named as a party because
18 of a typo in a contract, it should also be dismissed as a party. It is easy to understand how this issue
19 arose. The three (3) operation transfer agreements (“OTAs”) are virtually identical, and each was
20 entered into by entity with similar naming conventions: WA3 Op Renton LLC, WA3 Op Talbot
21

22 ¹ As set forth in the Proposed Order, Mr. Goldner is seeking a dismissal without prejudice as there is a possibility that
23 Plaintiffs *could* pierce the corporate veil in the future and Mr. Goldner *could potentially* have personal liability if that
were to occur. However, Plaintiffs cannot put the cart before the horse and that is exactly what they did here by naming
him personally before they even attempted to pierce the corporate veil.

1 LLC, and WA3 Op Univ LLC. It appears that the drafter of the OTAs merely left out the Op in
 2 WA3 Op Univ LLC. And, because of the duplicative nature of the OTAs, it does not appear that
 3 the signatories caught this issue either. WA3 Univ LLC is a non-existent entity. WA3 Op Univ
 4 LLC both exists and is in good standing. It is clear that the signatories to the OTAs intended to
 5 have the party signing the OTA to be WA3 Op Univ LLC. Therefore, WA3 Univ LLC should be
 6 dismissed.

7 VI. CONCLUSION

8 All of the entity Defendants are now in good standing, and it is undisputed that none of the
 9 contracts in this case were executed by Mr. Goldner personally. Unless and until Plaintiffs
 10 successfully pierce the corporate veil, all of the claims against Mr. Goldner must be dismissed.
 11 WA3 Univ LLC should also be dismissed because it never existed and was only included because
 12 of a scrivener's error.

13
 14 *I certify that this memorandum contains 1,591 words, in compliance with the Local Civil*
 15 *Rules.*

16 DATED this 18th day of October, 2024.

17 **DICKSON FROHLICH PHILLIPS BURGESS**

18 /s/ Brian Kellett

19 ROBERT P. DICKSON, WSBA No. 39770
 20 ALEXANDER J.R. WISBEY, WSBA No. 49696
 21 BRIAN C. KELLETT, WSBA No. 52032

22 *Attorneys for Defendants/Counterclaim Plaintiffs/Third-*
 23 *Party Plaintiffs*

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that on the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
Leslie Ellen Swanson Daniel Mark Weiskopf Charles Wittmann-Todd MCNAUL EBEL NAWROT & HELGREN 600 University Street, Suite 2700 Seattle, WA 98101 <i>Attorneys for Plaintiffs, Counterclaim Defendants, and Third-Party Defendant William Miller</i>	<input type="checkbox"/> PROCESS SERVER <input type="checkbox"/> COURIER SERVICE: <input type="checkbox"/> U.S. MAIL <input checked="" type="checkbox"/> E-SERVICE (if available) <input checked="" type="checkbox"/> EMAIL: lswanson@mcnaul.com dweiskopf@mcnaul.com cwittmantodd@mcnaul.com
Andrew Ramiro Escobar Ashley J. Sherwood SEYFARTH SHAW LLP 999 Third Avenue, Suite 4700 Seattle, WA 98104 John D. Waller David Patton DINSMORE & SHOHL 211 N. Pennsylvania Street, Suite 1800 Indianapolis, IN 46204 <i>Attorneys for Intervenor Merchants Bank of Indiana</i>	<input type="checkbox"/> PROCESS SERVER <input type="checkbox"/> COURIER SERVICE: <input type="checkbox"/> U.S. MAIL <input checked="" type="checkbox"/> E-SERVICE (if available) <input checked="" type="checkbox"/> EMAIL: aescobar@seyfarth.com asherwood@seyfarth.com <input type="checkbox"/> PROCESS SERVER <input type="checkbox"/> COURIER SERVICE: <input type="checkbox"/> U.S. MAIL <input checked="" type="checkbox"/> E-SERVICE (if available) <input checked="" type="checkbox"/> EMAIL: john.waller@dinsmore.com david.patton@dinsmore.com
Christopher T. Wion SUMMIT LAW GROUP 315 5th Avenue, Suite 1000 Seattle, WA 98104 <i>Attorney for Intervenor eCapital Healthcare Corp.</i>	<input type="checkbox"/> PROCESS SERVER <input type="checkbox"/> COURIER SERVICE: <input type="checkbox"/> U.S. MAIL <input checked="" type="checkbox"/> E-SERVICE (if available) <input checked="" type="checkbox"/> EMAIL: chrisw@summitlaw.com

1 Dated this this 18th day of October, 2024 at Seattle, Washington.

2
3 /s/ Louisa Florio
4 Louisa M. Florio, Paralegal

Decl of B. Miller ISO MFRS

Final Audit Report

2024-10-23

Created:	2024-10-23
By:	Lesley Bohleber (lbohleber@bskd.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAzuL_WHgi7z_105oZXAp7w32ahfSA_oBG

"Decl of B. Miller ISO MFRS" History



Document created by Lesley Bohleber (lbohleber@bskd.com)

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